United Nations CCPR/C/SRB/CO/3

International Covenant on Civil and Political Rights

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Human Rights Committee

Concluding observations on the third periodic report of Serbia*

1. The Committee considered the third periodic report of Serbia (CCPR/C/SRB/3) at its 3341st and 3342nd meetings (see CCPR/C/SR.3341 and 3342), held on 7 and 8 March 2017. At its 3364th meeting, held on 23 March 2017, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission of the third periodic report of Serbia and the information presented therein. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's large delegation on the measures taken during the reporting period to implement the provisions of the Covenant. The Committee is grateful to the State party for its written replies (CCPR/C/SRB/Q/3/Add.1) to the list of issues (CCPR/C/SRB/Q/3), which were supplemented by the oral responses provided by the delegation, and for the supplementary information provided in writing.

3. The Committee recalls its previous concluding observations (see CCPR/C/UNK/CO/1) and notes that the State party continues to declare that it is unable to monitor the application of the Covenant in Kosovo[1] owing to the fact that, pursuant to Security Council resolution 1244 (1999), civil authority there is exercised by the United Nations Interim Administration Mission in Kosovo (UNMIK). The Committee considers that the Covenant still applies in Kosovo and therefore encourages UNMIK to provide the Committee, in cooperation with the institutions of Kosovo and without prejudice to the final legal status of Kosovo, with a report on the human rights situation there.

B. Positive aspects

4. The Committee welcomes the following institutional and legislative measures taken by the State party:

(a) The adoption in 2014 of the Law on the Execution of Criminal Sanctions and the Law on the Enforcement of Non-Custodial Sanctions and Measures;

(b) The adoption of the National Strategy for Improving the Position of Women and Promoting Gender Equality (2016-2020) and the accompanying action plan for its implementation;

(c) The establishment in 2014 of the Gender Equality Coordinating Body;

* Adopted by the Committee at its 119th session (6-29 March 2017).

[1] All references to Kosovo in the present document should be understood to be in full compliance with Security Council resolution 1244 (1999).

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(d) The adoption in 2016 of the new Law on the Prevention of Domestic Violence.

5. The Committee also welcomes the ratification of, or accession to, the following instruments by the State party:

(a) The International Convention for the Protection of All Persons from Enforced Disappearance, on 18 May 2011;

(b) The Convention of the Council of Europe on Preventing and Combating Violence against Women and Domestic Violence, on 31 October 2013;

(c) The protocol on cooperation in searching for the missing persons, in 2015, which was signed jointly with Bosnia and Herzegovina.

C. Principal matters of concern and recommendations

Optional Protocol and domestic applicability of the Covenant

6. While welcoming the establishment of the council for monitoring the implementation of the recommendations of the United Nations human rights mechanisms, the Committee remains concerned about the lack of clear legal mechanisms for implementing and monitoring the implementation of the Views adopted by the Committee under the Optional Protocol. The Committee notes that the provisions of the Covenant are integrated into domestic law and consequently may be protected in the courts. However, it regrets that awareness of the practical applicability of the Covenant in the domestic legal system among the judiciary and legal community appears to remain low (art. 2).

7. **The State party should ensure that the Committee's Views are systematically disseminated and implemented, including those adopted concerning communication No. 1556/2007 (*Novaković and Novaković v. Serbia*), and strengthen its efforts to ensure that authorities, in particular judges, prosecutors and lawyers, are aware of the applicability of the Covenant's provisions in the State party.**

Anti-discriminatory legal frameworks

8. While the Committee acknowledges the strategy for prevention and protection from discrimination, it remains concerned about: (a) the lack of, or delays in, the practical implementation of the strategy; (b) the non-recognition of indirect discrimination in the current anti-discrimination law; (c) the lack of information on civil proceedings and the limited number of criminal proceedings brought forward on the basis of discrimination; and (d) the State party's failure to collect disaggregated data on ethnic and racial minorities (arts. 2-3 and 26-27).

9. **The State party should: (a) take concrete measures to ensure that the action plan for implementing the strategy for prevention and protection from discrimination is carried out in a timely and effective manner; (b) ensure that the planned amendments to the anti-discrimination law adequately address indirect discrimination as a form of discrimination; (c) increase the capacity of the Commissioner for the Protection of Equality to bring claims under the anti-discrimination law; (d) strengthen judicial enforcement of the anti-discrimination law through criminal and civil proceedings, including by training judges, law enforcement officials and lawyers regarding non-discrimination; and (f) collect data and develop tools that will allow the State party to assess and ensure the effective enjoyment by racial and ethnic minorities of all human rights and fundamental freedoms and make use of such data for planning and evaluation purposes.**

Hate crimes

10. The Committee is concerned that, despite the State party's efforts to prevent offences motivated by hatred, hate crimes, particularly against Roma, continue to be a serious problem in the State party. While noting the amendments to article 54 (a) of the Criminal Code introducing aggravating circumstances for crimes committed by individuals

who feel hatred for a particular race, religion, nationality or ethnicity, sex, sexual orientation or gender identity, it regrets that the State party has not provided any example of the practical implementation of those amendments (arts. 2, 6, 20 and 26).

11. **The State party should: (a) increase its efforts to promote tolerance for persons belonging to ethnic, national, racial, religious and other minorities, including persons belonging to the Roma community; and (b) effectively implement article 54 (a) of the Criminal Code, including by ensuring that hate crimes are identified and promptly investigated, that alleged perpetrators are prosecuted and, if convicted, that they are punished with appropriate sanctions.**

Discrimination against lesbian, gay, bisexual, transgender and intersex persons and persons with HIV

12. The Committee is concerned that: (a) the number of acts of discrimination, intolerance and violence against lesbian, gay, bisexual, transgender and intersex persons remains very high; (b) the legal consequences of adjusting or changing one's sex are not currently regulated by any legal framework and there is no right to a preferred gender in the absence of surgical intervention; and (c) persons with HIV continue to face discrimination and violations of their right to privacy, particularly within the context of health care (arts. 2, 7, 16 and 26).

13. **The State party should: (a) strengthen measures to eradicate all forms of social stigmatization, discrimination and violence against persons based on their sexual orientation and gender identity or HIV status; and (b) implement a procedure for legal gender recognition that is compatible with the provisions of the Covenant.**

Roma exclusion

14. The Committee reiterates its concerns that, despite the State party's efforts, members of the Roma community continue to suffer from widespread discrimination and exclusion, unemployment, forced eviction and de facto housing and educational segregation. While noting that the State party has made progress on the issue of registration, it is concerned about the continued difficulties faced by internally displaced Roma in terms of: (a) registering births and their place of residence and acquiring identification documents, including as a result of a narrow interpretation of the law on permanent and temporary residence; (b) being integrated into Serbian society; and (c) the poor conditions reported in collective centres (arts. 2, 7, 16-17, 24 and 26).

15. **The State party should increase its efforts to: (a) promote non-discriminatory access to opportunities and services in all fields for members of the Roma community; (b) facilitate and enable registration of children born to parents without identification documents and allow internally displaced Roma who live in informal settlements to register their place of residence and to acquire identification documents, including by reviewing the law on permanent and temporary residence; (c) work with internally displaced Roma communities to develop durable solutions that are suitable to them, including their local integration into Serbian society; and (d) take all steps necessary to implement the strategy for the social inclusion of Roma.**

Persons with disabilities

16. While the Committee notes that the State party has made some progress in terms of promoting and protecting the rights of persons with disabilities, it is concerned that persons with disabilities still face many challenges in getting access to justice, education, employment and political participation. The Committee notes with concern the forced placement in medical institutions, isolation and forced treatment of large numbers of persons with mental, intellectual and psychosocial disabilities; the inadequacy of the current legal frameworks to achieve deinstitutionalization and enhance appropriate community-based support; the reported tendency to resort to the deprivation of legal capacity, including full legal capacity, which disproportionally affects the rights of persons with disabilities; and the limited scope of protections against discrimination on grounds of disability (arts. 2, 7, 14, 16 and 25-26).

17. **The State party should: (a) take appropriate measures to ensure that persons with disabilities are not discriminated against in the enjoyment of their rights; (b) take all measures necessary to implement a policy of deinstitutionalization of persons with disabilities accompanied by appropriate community-based support; (c) ensure that any decision to isolate, place or treat persons with mental, intellectual and psychosocial disabilities is made after a thorough medical assessment, that any restrictions are legal, necessary and proportionate to the individual circumstances and include guarantees of an effective remedy, that any abuse is effectively investigated and that criminal liability is imposed; (d) pursue legal amendments in order to eliminate the tendency to resort to the full deprivation of legal capacity and strengthen its efforts to restore the legal capacity of persons with disabilities; (e) recognize the denial of reasonable accommodation for persons with disabilities as a form of discrimination; and (f) include disability as a grounds for prosecuting those allegedly responsible of hate crimes.**

Gender equality and discrimination against women

18. While the Committee notes that the State party has taken significant steps to improve the representation of women in the public sphere, patriarchal cultural patterns and stereotypical gender roles of women and men remain prevalent in Serbian society. It is also concerned about: (a) the situation of women belonging to vulnerable groups; (b) reported cases of early arranged marriage in some Roma communities; and (c) the lack of implementation of the law on gender equality (arts. 2-3, 7, 23 and 26).

19. **The State party should: (a) pursue efforts to raise awareness of women's equality with a view to combating all prejudices and stereotypes against women; (b) take all measures necessary to protect women belonging to vulnerable groups, including from early marriage; and (c) ensure that its legal frameworks regarding gender equality are fully implemented at all levels.**

Violence against women and children, including domestic violence

20. While acknowledging the State party's efforts to prevent violence against women and children, including domestic violence, the Committee is concerned that in practice severe forms of such violence remain prevalent. The Committee is particularly concerned at the inadequacy of the response of law enforcement and judicial authorities to cases of domestic violence, as few reported cases result in prosecutions and convictions (arts. 2-3, 6-7 and 26).

21. **The State party should increase its efforts, including by: (a) ensuring that sufficient technical and financial resources and training are dedicated to addressing the problem of violence against women and children; (b) doing more to raise public awareness of the adverse impact of domestic violence; (c) ensuring that women are made aware of the option provided in the new law on the prevention of domestic violence of requesting a restraining order and that the law is effectively implemented and enforced; and (d) ensuring that domestic violence cases are thoroughly investigated, that perpetrators are prosecuted and, if convicted, punished with sanctions commensurate to the severity of the crime.**

Disappeared persons and accountability for past human rights violations

22. While acknowledging the State party's efforts in respect of disappeared persons and accountability for past human rights violations, the Committee remains concerned about: (a) the limited progress made in the search for disappeared persons; (b) the low rate of prosecutions for war crimes committed during the armed conflicts, including those committed by middle- and high-ranking officials; (c) the narrow definitions of "victim" under the Law on Civilian Invalids of War and of "injured parties" under the Criminal Procedure Code, and the requirement that victims declare the disappeared person dead to obtain compensation; and (d) the lack of resources for the Office of the War Crimes Prosecutor, the lack of a new War Crimes Prosecutor and the alleged pressure exerted by the Government on the office of the Prosecutor (arts. 2, 6, 7, 9 and 16).

23. **The State party should: (a) continue to investigate all unresolved cases of disappeared persons in order to clarify their fate and whereabouts and ensure that victims and their relatives are informed of the outcome of the investigation; (b) ensure that all perpetrators of war crimes, including middle- and high-ranking officials, are prosecuted; (c) amend the Law on Civilian Invalids of War and the Criminal Procedure Code to expand the definitions of "victim" and "injured party" and ensure that all victims of enforced disappearance have an effective right to full reparation in conformity with human rights standards; and (d) ensure that the Office of the War Crimes Prosecutor has sufficient resources, appoint without delay a new War Crimes Prosecutor and ensure the Office's independence, so as to enable it to effectively discharge its mandate.**

Deaths in and disappearances from maternity wards

24. The Committee is concerned about the lack of legislation providing redress to parents of newborn children who have allegedly died in or disappeared from maternity wards, mostly between the 1970s and the 1990s (arts. 2, 6 and 23).

25. **The State party should take steps to ensure the rapid adoption of a law addressing alleged past deaths or disappearances of newborn children and providing parents with individual redress.**

Prohibition of torture and ill-treatment

26. The Committee is concerned that: (a) the definition of torture is still not in conformity with article 7 of the Covenant; (b) independent investigations undertaken by prosecutors wherever there are reasonable grounds to believe that an act of torture or ill-treatment has been committed are allegedly not systematic; (c) the prosecution rate for torture and ill-treatment remains low and convicted perpetrators receive lenient penalties; and (d) victims' access to reparation is often hindered owing to the high standard of proof of harm set by the courts and the application of statutes of limitations to their claims (arts. 2 and 7).

27. **The State party should take measures to: (a) amend its Criminal Code to include a definition of torture that is fully in line with article 7 of the Covenant and other internationally established norms; (b) ensure that an independent body conducts effective investigations into all credible allegations of torture or ill-treatment; (c) amend its legislation to ensure that acts of torture or ill-treatment are punished with penalties commensurate with their grave nature and repeal the statute of limitations for crimes of torture and ill-treatment; and (d) remove all obstacles that hinder the exercise of the rights of victims to a judicial remedy.**

Persons deprived of their liberty

28. While acknowledging the State party's efforts in respect of persons deprived of their liberty, the Committee is concerned about continuing overcrowding in prisons, poor detention conditions, especially in police detention premises; and the insufficient health-care services and meaningful activities for prisoners (arts. 7 and 10).

29. **The State party should strengthen its efforts to reduce overcrowding, including by continuing to develop the use of alternatives to detention, improve conditions of detention, including access to health care and activities, and increase its efforts to guarantee the right of detainees to be treated with dignity.**

Trafficking in persons and forced labour

30. The Committee is concerned about: (a) the presence of national and foreign criminal groups involved in trafficking and their exploitation of the large number of migrants and refugees in the State party; (b) information that the national anti-trafficking coordinator has not been provided with a formal workplan or budget; and (c) the situation of children trafficked or exploited by family members or others who are forced to work, beg or engage in prostitution (arts. 7-8, 13 and 24).

31. **The State party should: (a) strengthen measures to prevent and combat trafficking in persons, placing a specific focus on migrants and refugees; (b) devote the resources necessary to investigating cases of trafficking in persons and prosecuting all perpetrators; (c) provide the national anti-trafficking coordinator with the necessary resources and a formal workplan; (d) ensure that children are removed from families that are responsible for their exploitation and fully recognize children as victims rather than perpetrators of crimes; (e) ensure that the labour inspectorate and relevant coordinating bodies are provided with sufficient resources, training and access to identify and prevent child labour; and (f) develop programmes to rehabilitate victims, including children, of trafficking and forced labour.**

Refugees and asylum seekers

32. While acknowledging the current challenges regarding refugees and appreciating the basic legal protections in place, the Committee is concerned about: (a) the existence of significant obstacles and delays in the process of registering, interviewing and providing identification for asylum seekers and the low number of asylum claims granted; (b) reported cases of efforts to deny access to Serbian territory and asylum procedures, of collective and violent expulsions and of the misapplication of the "safe third country" principle, despite concerns regarding conditions in some of those countries; (c) inadequate conditions in reception centres, including when unaccompanied minors are placed with adults, and the absence of care for individuals outside of reception centres; (d) inadequate access for unaccompanied minors to guardians who make decisions in the best interest of the child; and (e) inadequate procedures to determine the age of unaccompanied minors (arts. 6-7, 13 and 24).

33. **The State party should strictly respect its national and international obligations by: (a) ensuring that access to formal procedures for asylum applications is available at all border points, notably in international airports and transit zones, and that all persons engaging directly with refugees or migrants are appropriately trained; (b) ensuring that all asylum applications are assessed promptly on an individual basis with full respect for the principle of non-refoulement and that decisions of denial can be challenged through suspensive proceedings; (c) refraining from collective expulsion of aliens and ensuring an objective assessment of the level of protection when expelling aliens to "safe third countries"; (d) ensuring adequate conditions both inside and outside reception centres for all refugees and asylum seekers; and (e) ensuring that appropriate protocols are in place for identifying the age of unaccompanied minors and ensuring that they receive appropriate guardianship and treatment that takes into account the principle of the best interests of the child.**

Administration of justice

34. While acknowledging the national judicial reform strategy and recent efforts to reduce the large backlog of cases, the Committee is concerned about: (a) the probation period of three years for new judges; (b) alleged cases of pressure and retribution exercised by politicians and the media on judges, prosecutors, the High Judicial Council and the State Prosecutorial Council; (c) the remaining backlog of court cases; and (d) the delays in the adoption of the draft law on free legal aid (art. 14).

35. **The State party should: (a) take steps to entrench judicial independence, including by ensuring the tenure of new judges and preventing any political interference in the work of the High Judicial Council and the State Prosecutorial Council; (b) take steps to ensure that all cases of political and media pressure on the judiciary and prosecutors are promptly investigated and sanctioned; (c) strengthen its efforts to ensure that trials take place in a reasonable time and reduce the backlog of court cases; and (d) strengthen its efforts to adopt the draft law on free legal aid.**

Freedom of thought, conscience and religion

36. With reference to its previous concluding observations (see CCPR/C/SRB/CO/2, para. 20), the Committee reiterates its concerns about the practical consequences of the

legal differentiation between "traditional" and "non-traditional" religions (arts. 2, 18 and 27).

37. **The State party should guarantee in practice that the principle of equal treatment of religions is respected, in compliance with the requirements of article 18 of the Covenant.**

Freedom of expression

38. The Committee is concerned about allegations of public officials publicly vilifying and intimidating media workers and about the narrowing space for debate, in particular through the prosecution of journalists and members of civil society for expressing their opinions. While noting the privatization of the media, the Committee remains concerned about the lack of transparency of media ownership and the ongoing public influence exercised on some media. The Committee is also concerned about aspects of the application of the Public Assembly Act of 26 January 2016 that might hinder, not facilitate, protection of the right to freedom of assembly (arts. 19 and 21).

39. **The State party should: (a) take immediate steps to provide effective protection to media workers from all forms of intimidation and ensure that all cases are duly investigated and perpetrators of those acts of intimidation prosecuted and appropriately sanctioned; (b) refrain from prosecuting journalists, human rights defenders and other members of civil society as a means of deterring or discouraging them from freely expressing their opinions; (c) take steps to ensure the transparency of media ownership and that private media outlets are free and independent, in conformity with the Committee's general comment No. 34 (2011) on the freedoms of opinion and expression; and (d) review the application of the Public Assembly Act of 26 January 2016 so as to ensure its compatibility with the Covenant.**

Participation in public affairs

40. The Committee remains concerned about: (a) the low level of representation of minorities in government bodies and public administration, including the Roma, and regrets the lack of relevant statistics; and (b) the allegations of attacks against political opposition figures and of serious cases of pressure exerted on voters (art. 25).

41. **The State party should: (a) strengthen its efforts to increase representation of members of the Roma community and other national minorities in State bodies at both the national and local levels, including, if necessary, through appropriate temporary special measures; and (b) ensure that an effective and independent election monitoring body is established and that allegations of attacks on politicians and intimidation of voters are promptly reported, investigated and addressed.**

D. Dissemination and follow-up

42. Through the council for monitoring the implementation of the recommendations of the United Nations human rights mechanisms, among others, the State party should widely disseminate the Covenant, the third periodic report, the written replies to the Committee's list of issues and the present concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, and the general public. The State party should ensure that the report and the present concluding observations are translated into the official languages of the State party.

43. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party is requested to provide, within one year of the adoption of the present concluding observations, information on the implementation of the recommendations made by the Committee in paragraphs 15 (Roma exclusion), 33 (refugees and asylum seekers) and 39 (freedom of expression) above.

44. The Committee requests the State party to submit its next periodic report by 29 March 2021 and to include in that report specific up-to-date information on the

implementation of the recommendations made in the present concluding observations and of the Covenant as a whole. The Committee also requests the State party, in preparing the report, to consult widely with civil society and non-governmental organizations operating in the country. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words. The Committee also invites the State party to agree, by 29 March 2018, to use its simplified reporting procedure, whereby the Committee transmits a list of issues to the State party prior to the submission of its periodic report. The State party's replies to the list will constitute its fourth periodic report to be submitted under article 40 of the Covenant.